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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2010-73

11 **DAX ERNST BERNEY**
12 **1729 Sarkesian Drive**
13 **Petaluma, California 94954**

A C C U S A T I O N

14 **Registered Nurse License No. 684740**

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant), brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about July 27, 2006, the Board issued Registered Nurse License Number
23 684740 to Dax Ernst Berney (Respondent). The license was in full force and effect at all times
24 relevant to the charges brought herein and will expire on August 31, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

4. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

6. Code section 726 provides, in pertinent part, that “[t]he commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.”

7. Code section 2761, subdivision (a), provides that the Board may take disciplinary action against a registered nurse based on unprofessional conduct.

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Sexual Abuse/Misconduct)

3 9. Respondent is subject to disciplinary action under Code sections 726 and 2761,
4 subdivision (a), for unprofessional conduct in that he committed sexual abuse, misconduct, or
5 relations with a patient, as follows:

6 10. On or about August 16, 2008, while working as a registered nurse in the emergency
7 department of Santa Rosa Memorial Hospital (SRMH) in Santa Rosa, California, Respondent told
8 patient M.M.¹ she was beautiful, massaged her thighs, rubbed her clitoris, inserted his fingers in
9 M.M.'s vagina, and massaged her left breast. M.M. had been recently admitted to the emergency
10 department for trauma following a car collision. Respondent was covering for M.M.'s assigned
11 nurse while her nurse was on break.

12 SECOND CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct: Sexual Abuse/Misconduct)

14 11. Respondent is subject to disciplinary action under Code sections 726 and 2761,
15 subdivision (a), for unprofessional conduct in that he committed sexual abuse, misconduct, or
16 relations with a patient, as follows:

17 12. On or about November 1, 2008, while working as a registered nurse in the emergency
18 department at SRMH, Respondent entered the room of patient S.D., who had been preparing to
19 leave the hospital. Respondent instructed S.D. to return to bed, massaged her neck and shoulders,
20 and reached between the sheets to massage S.D.'s left side between her breast and hip until S.D.
21 heard footsteps nearby and called out for her mother. S.D., who was dressed as a belly dancer,
22 had been taken to the hospital by ambulance from a Halloween party for observation of possible
23 seizure activity. Respondent was covering for S.D.'s assigned nurse while her nurse was on
24 break.

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27 ¹ Patients' initials are used to protect their privacy. Their full names will be disclosed
28 upon request in discovery.

PRAYER

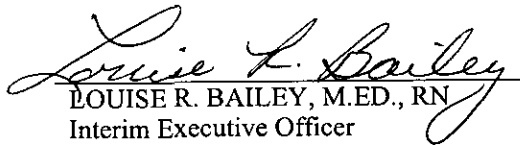
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 684740, issued to Dax Ernst Berney;

2. Ordering Dax Ernst Berney to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 8/11/09


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF200940451